



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Astro-Valcour, Inc.

File: B-253253

Date: August 30, 1993

Richard D. Lieberman, Esq., Sullivan & Worcester, for the protester.

Adam C. Striegel, Esq., General Services Administration, for the agency.

Jeanne W. Isgrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Shipping information provided by awardee as requested under solicitation did not qualify agreement to comply with pallet size and pallet load maximum height specifications, and thus did not render the bid nonresponsive, where information provided did not include all figures that would be necessary to determine compliance; since bid was signed, thereby showing agreement to comply with all specifications, bid was responsive, and whether awardee actually performs in accordance with all requirements is a matter of contract administration.

DECISION

Astro-Valcour, Inc. (AVI) protests the award of a contract to any firm but itself for 16 line items under invitation for bids (IFB) No. 2FYP-DW-93-0004-S, issued by the General Services Administration (GSA) for paper shipping sacks. AVI claims that the apparent low bid for those items, that of Sealed Air Corporation (SAC), is nonresponsive to the IFB and that SAC therefore should not receive the award.

We deny the protest.

The IFB, issued on March 16, 1993, contemplated award of a requirements contract for varying estimated quantities of three types of paper shipping sacks. The IFB required 23 National Stock Numbers (NSN), and several line items were grouped under each NSN, each representing a different destination and estimated number of packages required. AVI's protest concerns 16 line items, involving 7 NSNs,

contained within items 2 through 28. Award was to be made on an item-by-item basis.

The IFB required that the packaged items be placed on pallets, that the pallets be 48 inches by 40 inches or 40 inches by 48 inches in length and width, and that the pallet load have a maximum height of 53 inches. Under each NSN and corresponding line items, the IFB requested information regarding the packages and pallets as follows:

"BIDDER TO INDICATE WEIGHT PER UNIT OF
ISSUE _____ LBS
BIDDER TO INDICATE NUMBER OF PACKAGES PER SHIPPING
CONTAINER _____
BIDDER TO INDICATE NUMBER OF SHIPPING CONTAINERS
PER PALLET: _____."

The solicitation did not specify any of the above requested information, and did not specify dimensions or cubic volume of shipping containers or packages.

Nine bids were received, of which five included prices for items 2 through 27. The apparent low bids for many of the items were found to contain clerical errors which, upon correction, made them no longer low. Ultimately, however, SAC was found to be the apparent low bidder, and AVI second low, for 16 items. AVI filed this protest with our Office on April 28, 1993. Award is being withheld pending resolution of the protest.

AVI argues that SAC's bid was nonresponsive to the pallet size requirement or, alternatively, to the pallet load maximum height limitation of 53 inches, based on the data in SAC's bid under each NSN and corresponding line items. Specifically, AVI maintains that it is physically impossible to meet the specifications for both pallet size and pallet height given the number of packages per shipping container and number of shipping containers per pallet specified by SAC; AVI reaches this conclusion based on a calculation using its own shipping container dimensions. AVI maintains that the deviation is material because compliance would have forced SAC to increase its prices above those offered by AVI, leaving AVI the apparent low bidder.

GSA asserts that the requested shipping data was for information purposes only; it did not intend to evaluate bids for compliance with the pallet size and maximum height specifications, as evidenced by the lack of provision for such an evaluation in the solicitation. In any case, GSA denies that it is impossible for SAC to meet the palleting requirements given the information in SAC's bid, since the bid and IFB are silent as to the size of the packages and shipping containers, dimensions that would be necessary to

conclusively determine whether the palleting requirements will be met.

To be responsive, a bid must reflect an unequivocal offer to provide the exact item or service called for in the IFB so that acceptance of the bid will bind the contractor to perform strictly in accordance with the IFB's material terms and conditions. Biehn Constr., Inc., B-244364, Sept. 9, 1991, 91-2 CPD ¶ 231. If in its bid a bidder attempts to impose conditions that would modify material requirements of the invitation, limit its liability to the government, or limit rights of the government under any contract clause, then the bid is nonresponsive and must be rejected. Luhr Brothers, Inc., B-248423, Aug. 6, 1992, 92-2 CPD ¶ 88.

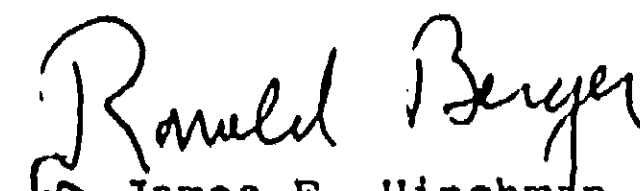
We agree with GSA that SAC's bid was responsive. First, the IFB did not specify the number of packages per shipping container or the number of shipping containers per pallet; thus, the figures supplied by SAC were not inconsistent on their face with any IFB requirements. Moreover, contrary to AVI's position, it is not possible to use SAC's figures in a calculation that shows SAC was taking exception to the pallet size or height requirements. SAC did not take any express exception to the pallet size requirement, and the IFB did not specify or call on bidders to provide all of the numbers that would be necessary to calculate the pallet load height. SAC indicated in its bid that each pallet would contain 8 shipping containers for all but one NSN, for which the pallet would contain 12 shipping containers. Since the IFB did not call for any information as to the dimensions of the shipping containers, it is impossible to determine the height of SAC's pallet loads from the face of the bid; it is not impossible to put 8 or 12 containers on a pallet of the specified size and remain within the 53-inch height limit, depending on the size of the containers. There is nothing in the record showing that SAC's shipping containers would be the same size as those on which AVI's calculations were based. Although the protester has argued that we should obtain the container dimensions and determine compliance with the specification, it is well-established that information extraneous to the bid as submitted cannot be used to determine responsiveness. Haz-Tad, Inc.; Hazeltine Corp.; Tadiran, Ltd., 68 Comp. Gen. 92 (1988), 88-2 CPD ¶ 486.

By signing its bid, SAC bound itself to comply with the palleting requirements and nothing on the face of its bid limits, reduces, or modifies its obligation to perform in accordance with those requirements. A bid which, on its face, takes no exception to the IFB's requirements is responsive, since it is an unqualified promise to do the

exact thing called for in the solicitation. Hicklin GM Power Co., B-222538, Aug. 5, 1986, 86-2 CPD ¶ 153. Whether SAC ultimately meets its commitment to fulfill the IFB's requirements is a matter of contract administration within the ambit of the agency, not our Office. Id.

Alternatively, AVI argues that the IFB apparently contained an ambiguity as to the purpose of the requested packaging and pallet information, and that cancellation of the IFB and resolicitation therefore is appropriate. We do not agree that the IFB was ambiguous in this regard. Since the IFB did not contain or request information sufficient to determine compliance with the pallet size and height requirements, we believe it should have been clear that the shipping figures would not be evaluated as a matter of responsiveness.

The protest is denied.


James F. Hinchman
General Counsel